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IN THE
COURT OF APPEALS OF INDIANA

LAMONT DARION TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0711-CR-497
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0602-FA-7

March 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Lamont Darion Taylor appeals his conviction for Possession of Cocaine, as a Class C felony. Taylor raises a single issue for our review, which we restate as whether the trial court abused its discretion when it allowed the State to introduce cocaine into evidence against him at trial.

We affirm.

FACTS AND PROCEDURAL HISTORY

Sometime after 1:00 a.m. on February 2, 2006, South Bend Police Officers Daniel Lawecki and Neil Graber initiated a traffic stop of Taylor's vehicle. Taylor's vehicle was moving "at a pretty high rate of speed" and had an improperly displayed temporary license plate. Transcript at 121-23. Taylor was driving the vehicle at the time and was alone in the car.

Before exiting their patrol car, Officers Lawecki and Graber noticed that Taylor was "moving around quite a bit" and "kept looking up in the rearview mirror." Id. at 123. The officers then approached Taylor's vehicle, with Officer Graber approaching along the driver's side and Officer Lawecki along the passenger's side. Officer Graber shined his flashlight at Taylor, and Officer Lawecki noticed that Taylor "moved his hand from the [center] console and put it in his lap." Id. at 124.

Officer Graber asked Taylor for identification and vehicle registration. At the same time, Officer Lawecki "looked into the vehicle" and saw "a clear bag [that] had a yellowish, rock-like substance sticking out" from underneath the center console. Id. at 124-25. Officer Lawecki, who had been involved in about 100 narcotics investigations

and was familiar with the packaging and appearance of cocaine, believed the substance in the bag was crack cocaine. The rear seat of the vehicle was illuminated by Officer Lawecki's flashlight, the patrol car's spotlight, and a nearby street lamp.

Officer Lawecki indicated to Officer Graber to have Taylor removed from the vehicle. Officer Graber did so, and Taylor was moved to the rear seat of the patrol car. Officer Graber, who also was familiar with the appearance and packaging of cocaine, then looked in the rear seat of Taylor's vehicle and concurred with Officer Lawecki's assessment that the substance was crack cocaine. The officers then requested a third opinion of their supervisor, Sergeant Ronald Kaszas, who had been involved in more than 500 cocaine-related investigations. Sergeant Kaszas arrived shortly thereafter and also believed the substance to be crack cocaine.

The officers entered Taylor's vehicle and removed the plastic bag. Sergeant Kaszas then remembered that he had a camera with him, so the officers placed the bag back in the vehicle at the approximate location to its original position and took a photograph. The bag was removed again, and the substance inside it field-tested positive for cocaine. The cocaine weighed 9.02 grams.

On February 3, 2006, the State charged Taylor with possession of cocaine, as a Class A felony. On May 18, Taylor filed a Motion to Suppress Evidence, which the court denied on July 31 after a hearing. On April 9, 2007, the court held Taylor's jury trial, at which Sergeant Kaszas and Officers Lawecki and Graber testified. Specifically, they testified that they had seen a substance that they each believed to be cocaine in the back of Taylor's vehicle while they were standing outside of the vehicle. After Officers

Lawecki and Graber gave their testimony but before Sergeant Kaszas testified, the State offered the cocaine into evidence. Taylor objected, referencing the grounds made in his motion to suppress. The trial court overruled Taylor's objection. The jury then found Taylor guilty of possession of cocaine, as a Class C felony. This appeal ensued.

DISCUSSION AND DECISION

Taylor argues that the trial court erred in denying his motion to suppress the cocaine. But Taylor is challenging the admission of evidence following his conviction rather than in an interlocutory appeal. Thus, the issue is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Bentley v. State, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006), trans. denied. A trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse such a ruling only upon a showing of an abuse of discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. Dawson v. State, 786 N.E.2d 742, 745 (Ind. Ct. App. 2003), trans. denied.

As an initial matter, Taylor has waived his argument that the trial court abused its discretion in admitting the cocaine at trial. Taylor did not seek interlocutory review of the court's denial of his motion to suppress. Rather, he proceeded with his trial. In such cases, the court's denial of a motion to suppress is insufficient to preserve error for appeal. Washington v. State, 784 N.E.2d 584, 586 (Ind. Ct. App. 2003). Instead, the

defendant must make a contemporaneous objection to the admission of the evidence at trial. Id.

Here, Taylor did not object to either Officer Lawecki's or Officer Graber's testimony that they had each seen cocaine in the back of Taylor's vehicle. Again, they each testified that they had seen a "rock-like substance," which they each believed to be cocaine, in a plastic bag near the center console. Transcript at 125, 165. That testimony was supported by accompanying photographs from the scene, which were admitted without objection. And Officer Lawecki testified that the substance field-tested positive for cocaine. Taylor first objected to the cocaine evidence when the State offered the cocaine itself into evidence. At that point, the testimony regarding the significance of the cocaine had been admitted without objection. Thus, the issue is waived. See Edwards v. State, 730 N.E.2d 1286, 1289 (Ind. Ct. App. 2000) (holding that the defendant waived his contention that the trial court erred in allowing into evidence checks written against an account when the State had already offered, without objection, testimony about the significance of the checks).

Waiver notwithstanding, Taylor's appeal is without merit. Although search warrants are a general prerequisite to a constitutionally proper search and seizure, there are exceptions. See Perry v. State, 638 N.E.2d 1236, 1240-41 (Ind. 1994). The plain view doctrine is one such exception. See Jones v. State, 783 N.E.2d 1132, 1137 (Ind. 2003).

> The plain view doctrine allows a police officer to seize items when he inadvertently discovers items of readily apparent criminality while rightfully occupying a particular location. First, the initial intrusion must have been authorized under the Fourth Amendment. Second, the items

> must be in plain view. Finally, the incriminating nature of the evidence must be immediately apparent.

Id. (citations omitted).

Here, Taylor does not challenge that the initial intrusion was authorized under the Fourth Amendment, nor does he assert that the incriminating nature of the cocaine was not immediately apparent. Rather, Taylor only argues that "the seized cocaine was not in plain view." Appellant's Brief at 12. In support of that assertion, Taylor maintains that the State's photographs of the cocaine in his vehicle are "indiscernible" and "do not readily represent cocaine." Id. Taylor also asserts that Officer Lawecki was not certain that cocaine was present in the plastic bag.

But Taylor ignores the evidence in favor of the trial court's ruling, which we are obliged to consider on appeal. See Dawson, 786 N.E.2d at 745. Specifically, he ignores the fact that three different officers testified that they had seen a substance that they each believed to be cocaine in the back of Taylor's vehicle while they were standing outside of the vehicle. Each of those officers has extensive experience in recognizing cocaine. Instead, Taylor's arguments amount to a request for this court to reweigh the evidence, which we will not do. See id. The trial court did not abuse its discretion in admitting the cocaine.

Affirmed.

BAILEY, J., and CRONE, J., concur.